GOVERNMENT OF MALAYSIA & ANOR.

v.

ABD. RAHIM MOHD. NOH & ORS.

FEDERAL COURT, KUALA LUMPUR
WAN SULEIMAN FJ
GEORGE SEAH FJ
MOHD. AZMI FJ
[CIVIL APPEAL NO. 36 OF 1982]
4 MAY 1983

LABOUR LAW: *Employment - Salary - Applicability of Federation Establishment Office Circular 1957 - Applicability of salary scale 76 - Limitation - Whether claims statute-barred.*

The appeal was against the decision of the Judicial Commissioner, High Court, Raub who had held that the respondents' claim was not statute-barred under s. 2 of the Public Authorities Protection Act 1948 and had granted a declaration that the respondents as Larvae Collectors (Pahang) were entitled to salary scale 76 of Federation Establishment Office (FEO) Circular No. 5 of 1957 ("the Circular"), limiting the damages to 6 years prior to the filing of the writ until the date of implementation of the Suffian Salary Scales. The main issues before the appellate Court were whether the 1956 or 1957 Circular was applicable to the respondent: if the 1957 Circular was applicable, whether the respondents were entitled to salary scale 76 or to only 37 or 70; and whether the respondents' claim was time barred by virtue of s. 2 of the Public Authorities Protection Act 1948.

Held:

[1] The 1957 Circular was applicable only to monthly paid employees in Division IV of the Public Service and Malayan Railway and was not applicable to all except respondent No. 10 as at the material time when the Circular was issued, all the respondents who were already in service, except respondent No. 10, were daily-rated staff who had had increases in salary under the 1956 and 1960 Circulars, which applied to daily rated employees. The 1957 circular was applicable to respondent No. 10 at the date of its issue and became applicable to the others when they became monthly rated in 1962 and 1963.

[2] Only "Larvae Collectors (Pahang)" were entitled to salary scale 76 and respondent No. 10 was so entitled at the date of the issue of the 1957 Circular as a monthly-paid employee employed by the State of Pahang. The other respondents were never entitled to scale 76 as by the time they became monthly paid employees or were first appointed into the service, by virtue of FEO Circular 2 of 1959, all State officers employed in the Medical Department became Federal officers with effect from 1 January 1958 and were therefore not entitled to increases in pay under scale 76 of the 1957 Circular. The contract between a public servant and the government is of a special kind as once appointed the government servant acquires a status and his rights and obligations are no longer determined by consent of both parties but by statute or statutory administrative rules made by the government. [*Government of Malaysia v. Rosalind Oh Lee Pek Inn* [1973] 1 MLJ 222: *Rajion bin Haji Sulaiman v. Government of Kelantan* [1976] 1 MLJ 118].

[3] Respondent No. 10's claim was not statute-barred. His pay had not been adjusted at all and there was a continuous injury which had never in fact ceased. The word "injury" in s. 2(a) includes any legal wrong which is a violation of a contractual right. However the actual arrears payable to respondent No. 10 would be left to the appropriate authority to determine.

[Appeal allowed except in respect of respondent No. 10.]

Cases referred to:
Earl of Harrington v. Corporation of Derby [1905] 1 Ch 205
Government of Malaysia v. Rosalind Oh Lee Pek Inn [1973] 1 MLJ 222
Rajion bin Haji Sulaiman v. Government of Kelantan [1976] 1 MLJ 118

Legislation referred to:
Public Authorities Protection Act 1948, ss. 2, (a), 25(a)

Other sources referred to:
Oxford Companion to Law

For the appellants - Abu Mansor Ali, SFC (Lamin Mohamed Yunus with him)
For the respondents - Wan Mustapha bin Haji Wan Ali; M/s. Wan Mustapha & Co.

JUDGMENT

Mohd. Azmi FJ:

This is an appeal by the Government of Malaysia and the State Government of Pahang against the decision of the Judicial Commissioner at High Court Raub in holding that respondent's claim was not statute-barred under s. 2 of the Public Authorities Protection Act 1948, and in granting a declaration in lieu of all the prayers in the Statement of Claim that the respondents as Larvae Collectors Pahang were entitled to salary scale 76 of Federation Establishment Office Circular No. 5 of 1957 (hereinafter referred to as "the 1957 Circular"). On the plea of limitation, the learned Judicial Commission was persuaded to determine the issue as a preliminary objection on point of law without the benefit of hearing any evidence, and the declaration granted was in the following terms:

> That the plaintiffs are entitled to have implemented in their favour forthwith, salary 76 of Circular No. 5 of 1957 dated 3 April 1957 and issued by the Federal Establishment Office in their favour by the 1st defendant and to have the respective liabilities or sums due to the plaintiffs on account thereof computed, ascertained and paid to the plaintiffs provided that such liabilities or sum aforesaid shall be limited only to the period commencing from 27 October 1964 to 30 April 1969 both dates inclusive.

In limiting the liabilities of the appellants to the aforesaid period, the learned Judicial Commissioner was adopting the judgment of Buckley J in the case of *Earl of Harrington v. Corporation of Derby* [1905] 1 Ch 205 where it was held that once the action was commenced within the prescribed period of limitation under special limitation statute like the Public Authorities Protection Act, damages could be claimed for a period of up to 6 years prior to the date of filing of the writ as limited by general statute of limitation. He therefore ordered that the salary claim of the respondents should be limited to 6 years from the date of filing of the writ until the date of implementation of the Suffian Salary Scales which replaced the salary scales of the 1957 Circular. It was common ground that the writ was filed on 27 October 1970 and Suffian Salary Scales were implemented retrospectively from 1 May 1969. Thus, in granting the declaration, the learned Judicial Commissioner held that the respondent's entitlement to salary scale 76 should be limited to the period from 27 October 1964 to 30 April 1969.

Before us, two main issues are canvassed. Firstly, whether salary scale 76 of the 1957 Circular was applicable to the respondents, and secondly even if it was applicable, whether the respondent's claim was time-barred by virtue of s. 2 of the Public Authorities Protection Act, 1948. On the first issue, it is the contention of the Counsel for the appellants that the respondents were not entitled to salary scale 76 simply because the 1957 Circular was not meant for daily-rated staff, and that by virtue of Service Circular No. 2 of 1959 those

respondents who were serving as Pahang State Officers on 1 January 1958 had been converted to Federal Officers, and as such they became Federal Larvae Collectors and could only be entitled to scale 37 or 70. On the other hand, it is the contention of the Counsel for the respondents that being Larvae Collectors employed by the State of Pahang and working in Pahang, they were entitled to salary scale 76 irrespective of whether they were daily-paid or monthly-paid. It is argued that although under Appendix III of the 1957 Circular, Larvae Collectors were entitled to be placed either under scales 37, 70 or 76, it is self-evident that scale 76 was specially provided for Pahang Larvae Collectors like the respondents, and that scale which offered a more attractive pay than scales 37 and 70 ought to have been implemented in their favour from 1 March 1956 - the date on which the 1957 Circular came into force. The three separate scales for Larvae Collectors are now reproduced:

Scale No. 37 RM85 x 3 - 94/100 x 7.50 - 160

Scale No. 70 RM94 x 7.50 - 109

Scale No. 76 RM94 x 7.50 - 109/126.50 x 7.50 - 186.50/197.50 x 7.50 - 280

Although in their statement of claim various declarations were sought by the respondents, it is apparent from the arguments both here and the Court below that what the respondents actually wanted was a declaration that they were entitled to salary scale 76 as provided in the 1957 Circular. In order to succeed the respondents must show they were entitled to the benefits of the 1957 Circular, and further to be entitled to scale 76, they must also show that they were "Larvae Collectors (Pahang)". In our view, the declaration that the respondents were seeking could not be granted unless they could prove firstly that the 1957 Circular was applicable to them either at the date of its issue or at any subsequent date, and secondly that they still remained as "Larvae Collectors (Pahang)" at the material time when that Circular become applicable to them.

On the question of whether the 1957 Circular was applicable to the respondents either at the date of its issue on 3 April 1957 or at any date subsequent thereto, we propose to examine the facts of the present dispute and the scope of the 1957 Circular. Briefly, the facts may be summarised as follows. Except for respondent No. 19 who was a monthly-rated Larvae Collector from the date of his first appointment on 1 October 1963, the other respondents commenced employment either as daily-paid Larvae Collectors or Labourers, or as monthly-paid Office Boys in the Pahang Medical Department. Office Boys were monthly-paid, but because daily-rated Larvae Collectors' salary was then more attractive, all the respondents who were initially Labourers and Office Boys eventually became Larvae Collectors either on promotion or on their own applications. On appointment as Larvae Collectors, the monthly-paid Office Boys became daily-rated staff, and the Labourers, of course, continued on daily pay. This was the case of respondent Nos. 7, 9, 10, 12, 13 and 14 who on first appointment were Office Boys but later became daily-paid Larvae Collectors. In the same way, respondent Nos. 8, 11, 15, 16, 17, 18 and 20 started as Labourers and later became Larvae Collectors. In the case of respondent Nos. 1 to 6, they were daily-rated Larvae Collectors from the start. As stated earlier, only respondent No. 19 commenced employment as monthly-paid Larvae Collector. Others, either initially or in the course of their employment, started as daily-paid Larvae Collectors and eventually became monthly-paid Larvae Collectors. As contained in the respondents' service records and also in para. 5 of the first appellant's Amended statement of defence, respondent Nos. 1 to 17 were placed on the monthly pay on 1 July, 1962 except respondent No. 10 who became monthly-rated on 10 January 1957, and respondent Nos. 18 to 20 on 1 October 1963. By the 1957 Circular which was dated 3 April 1957, salary scales of

all officers in Division IV of the Public Service including the Malayan Railway were revised with effect from 1 March 1956 in accordance with the tables set out in Appendix III to the Circular. The provisions of the 1957 circular were made applicable to all Division IV officers who were currently paid from funds of the Federal Estimates. There was no dispute on the pleadings that at all material times the respondents were paid from Federal fund although they were employed by the Pahang State Government. There was however, dispute as to whether as daily-rated staff they were in Division IV of the Public Service. Appendix III of the 1957 Circular contained the subject matter of the present dispute, namely salary scale 76 which covered four types of employees including "Larvae Collectors (Pahang)". There were two other salary scale in Appendix III referring to "Larvae collectors" i.e. scales 37 and 70 but without the qualified word "Pahang". On being emplaced on monthly pay, respondent Nos. 1 to 17 were put on maximum salary scale 70 from 1 July 1962 and paid a salary of RM109 per month, except for respondent No. 10 whose salary was revised to RM85 under scale 37 from 10 January 1957. It is relevant to note at this stage although the appellants had conceded that the 1957 Circular was applicable only to respondent No. 10, they maintained that the proper scale should be 37 and not scale 76 in view of his existing pay before conversion. As regards respondent Nos. 18 to 20 they were put on starting pay of salary scale 70 with effect from 1 October 1963 and paid RM94 per month.

In considering the scope and extent of the 1957 Circular, it is unnecessary for us to rely on the personal interpretation of Encik Mansor bin Latiff, an Executive Officer in the Ministry of Health (DW1) and Encik Abdul Aziz Mohd. Ali of the Public Service Department (DW2) and to the various opinion expressed in the exchange of correspondence between the two appellants, and between the appellants and the trade union representing the respondents. In our view, the 1957 Circular was self-evident and self-explanatory on the scope of its application. Both from the heading and body of the Circular there can be no doubt that the pay scales in Appendix III were meant for monthly-paid staff in Division IV of the Public Service and Malayan Railway. Indeed, from the judgment of the learned Judicial Commissioner, he rightly accepted that the 1957 Circular only applied to Division IV officers and that meant they must be monthly-paid employees. We find support in our conclusion by the existence of FEO Circular No. 8 of 1956 (hereinafter referred to as "the 1956 Circular") which dealt with wage increases for daily-rated staff and came into force on 16 March, 1956. The 1956 Circular was subsequently replaced by FEO Circular No. 6 of 1960 effective from 1 January 1960. We have considered the main bone of contention of Counsel for the respondents that the 1957 Circular was applicable to all "Larvae Collectors (Pahang)" irrespective of whether they were daily-rated or monthly-rated. On the evidence we must disagree. We find that consistent with the increases in pay given to daily-rated staff *vide* the 1956 Circular, the Federal Government issued the 1957 Circular to give corresponding pay increases to monthly-rated officers in Division IV of the Public Service. We are satisfied that the 1956 Circular and the 1957 Circular were intended to be part of the same exercise in pay revision for Civil Servants in the Public Service and employees in the Malayan Railway. The fact that these two Circulars were meant to be part of the same salary revision exercise was made even more clear by FEO Circular No. 58 of 1956 dated 10 December 1956 which was circulated eight months after the 1956 Circular was but before the 1957 Circular was approved. The FEO Circular No. 58 of 1956 was addressed to all Heads of Federal Departments, all Secretaries to Ministries, and copied to all State/Settlement Secretaries, and the Secretary Staff Side Whitley Council (Division I to IV). Paragraphs 1 and 2 of that Circular read as follows:

> 1. I am directed to inform you that negotiations in Whitley Council, (Divisions I-IV), for an increase in the salary scales of officers in Division IV of the Public Service, in accordance with recent increases granted to daily-rated staff, have now entered the final stage.

2. It is hoped to be able to refer the proposed new draft scales to Government for approval in January 1957. In the event of approval being given to the new scales, a circular will be issued as soon as possible. The increases will be retrospective to 1 March 1956.

Following this letter of intent, the 1957 Circular was issued dated 3 April 1957 but made effective from 1 March 1956. In the circumstances we agree with the contention of the appellants that all daily-rated staff whether Larvae Collectors or otherwise could not avail themselves of the salary scales provided under the 1957 Circular. In the pay revision exercise, a clear distinction had been made by the Government with the approval of Whitley Council, between daily-rated staff who should be governed by the 1956 and 1960 Circulars, and monthly-rated officers in Division IV of the Public Service and Malayan Railway who should be governed by the 1957 Circular. Now, applying the construction that we have placed on the 1956 and 1957 Circulars to the facts of the present case it cannot be disputed that at the material date when the 1957 Circular was issued, all the respondents (except respondent No. 10) were daily-rated, and as for respondent Nos. 17 to 19 they were not even in service as yet. The inapplicability of the 1957 Circular to the respondent at the material time is further borne out by the fact that respondent Nos. 1 to 8 and 20 had an increase in salary under the 1956 Circular and in accordance thereto their pay revisions were made effective from 16 March 1956. Respondent Nos. 9, 11 and 15 were also given wage increase in accordance with Appendix 'A' of the 1956 Circular (see p. 216 Appeal Record). Respondent Nos. 13, 14, 16 and 17 obtained their pay revisions with effect from 1 January 1960 under FEO Circular No. 6 of 1960. Having accepted their pay revisions under these two Circulars as daily-rated Larvae Collectors or daily rated Labourers, we fail to see how they can now have a second bite in the same pay revision exercise under another Circular meant for monthly-rated staff. This would be the effect if their claim under the 1957 Circular were allowed. With regard to respondent No. 12 (Ahmad bin Abu Kasim) no revision in pay had apparently been given either under 1956 Circular or Circular No. 6 of 1960. If so, this is clearly wrong. As daily-rated staff, he should be given pay revision under the said Circulars though not under the 1957 Circular. Before us, the appellants maintained their concession that the 1957 Circular was applicable to respondent No. 10 but they continued to say that he was not entitled to scale 76. In our view the very fact that scale 76 in Appendix III of the 1957 Circular had made special provision for "Larvae Collectors (Pahang)" showed the clear intention of the Government to give better pay for monthly-paid Larvae Collectors employed by the State of Pahang than their counter-parts elsewhere. Paragraph 10 of the 1957 Circular made it clear that in some cases different scales were provided for oficers in same grade. This was explained in the Circular by the fact that there were minor variations for historical and other reasons in the scales for certain posts between various States and Settlements. Indeed before us, Counsel for both appellants were unable to suggest the class of Larvae Collectors who should benefit from scale 76, if monthly-rated Larvae Collectors employed by the State Government of Pahang like respondent No. 10 were not qualified. We also see no merit in appellants' argument that scale 76 was inapplicable to respondent No. 10 merely on the ground of para. 11 of the 1957 Circular. We are of the view that para. 11 was only a key to locating an officer's revised salary scale, but it could not override an officer's entitlement to a particular scale where such salary scale had been clearly introduced for a certain class of officers. Scale 76 was obviously meant for "Larvae Collectors (Pahang)" who were monthly-paid in Division IV of the Public Service, and respondent No. 10 came squarely under this category when he became monthly-rated Larvae Collector on 10 January 1957. In the circumstances, we hold that 1957 Circular was only applicable to respondent No. 10 at the date of its issue. As regards the other respondents, the 1957 Circular became applicable to them subequently. Respondent Nos. 1 to 9 and respondent Nos. 11 to 17 became mothly-rated on 1 July 1962, and respondent Nos. 18 to 20 on 1 October 1963. As such the 1957 Circular became applicable to them either in July 1962 or October 1963.

We now deal with the next question of whether the respondents were still "Larve Collectors (Pahang)" in 1962 and 1963 when the 1957 Circular became appllicable to them. In this connection it is important to observe that except for respondent Nos. 17, 18 and 19 who were first employed on or after 1 January 1958, the other respondents were first employed before that date and in some cases as early as 1953. It is our view that by virtue of FEO Circular No. 2 of 1959 the Medical Department had ceased to be a State Department and all State officers employed in that Department also became Federal with effect from 1 January 1958 notwithstanding that the said Circular preserved certain privileges which they had hitherto enjoyed as State officers. Consequently, all the respondents who were in service on 1 January 1958 had ceased to be "Larvae Collectors (Pahang)" with effect from that date. Although FEO Circular No. 2 of 1959 dated 30 January 1959 is self-explanatory, it would be helpful to reproduce the relevant parts which read as follows:

> *Former State Officers of the Medical and Education Departments*
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> On 1 January 1958, the Medical and Education Departments became Federal Departments, consequent on the inclusion of 'Medical and Health' and 'Education'in the list of Federal subjects in the ninth schedule to the Constitution.
>
> 2. Where posts for officers of State common-user services, such as the State Clerical Services, remain in the Federal Estimates, there is of course no change in the status of the officer concerned. But all remaining officers of these Departments who were formerly State Officers have become Federal Officers with effect from 1 January 1958, and their administration in service matters is the responsibility of the Federal Head of Department and Ministry concerned; the existing terms of service of such officers will be modifed as explained in paras. 3-7 below as a result of this change of status.

Thus, from the date the respondents first entered the service of the State Medical Department Pahang until 31 December 1957, respondent Nos. 1 to 16 and respondent No. 20 enjoyed the status of officers of that State, initially either as Labourers or Office Boys but eventually as Larvae Collectors. However, as from 1 January 1958 they all became Federal Officers and can therefore be described as Federal Larvae Collectors although they continued to work in Pahang. In short from that date the Medical Department in Pahang ceased to be a State Department, and State Larvae Collectors in that Department also losts their status as "Larvae Collectors (Pahang)" for whom scale 76 had been specially provided. It was only after they had ceased to be Pahang Larvae Collectors on 1 January 1958 that they (except respondent No. 10) were emplaced on monthly-rate and thereby became entitled to the 1957 Circular. As mentioned earlier, respondent Nos. 1 to 9, and 11 to 16 became monthly-rated on 1 July 1962 and respondent Nos. 17 to 20 on 1 October 1963. In the circumstances, although the 1957 Circular was applicable to them, they were only entitled to scale 37 or 70 but not to scale 76. As Larvae Collectors, the 1957 Circular was applicable to them on being emplaced on monthly rate but on such emplacement they had ceased to enjoy the status of "Larvae Collectors (Pahang)". In the case of respondent Nos. 17 to 19, since they were first appointed to the service on or after 1 January 1958, they were Federal Larvae Collectors from the start although they were working in Pahang and as such the question of losing the status of Pahang Larvae Collectors did not even arise in their case. There was therefore nothing unlawful in the action of the appellants by putting the respondents on scale 37 or scale 70 when the 1957 Circular became applicable to them. In the law of master and servant, civil servants are a class by themselves. The contract between a public servant and the government is of a special kind as once appointed the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties but by statute or statutory or administrative rules made by the Government [see *Government of Malaysia v. Rosalind Oh Lee Pek Inn* [1973] 1 MLJ 222 and *Rajion bin Haji Sulaiman v. Government of Kelantan*

[1976] 1 MLJ 118]. FEO Circulars are, therefore, binding on both the Government and its employees. We therefore hold that the learned Judicial Commissioner was wrong when he held that all the respondents were entitled to salary scale 76 as and when they were put on monthly pay on the ground that they thereby became Division IV employees. In arriving at that conculsion we find that the learned Judicial Commissioner had not considered sufficiently the records of service of the various respondents, with the result that he failed to take into account the position of those respondents who already had their pay revised under the 1956 or 1960 Circulars as daily-rated employees. Nor had he dealt sufficiently with the effect of FEO Circular No. 2 of 1959 which changed the status of all State employees of Medical Department to Federal officers with effect from 1 January 1958. He also failed to consider adquately the position of those respondents who were first appointed into the service on or after 1 January 1958.

In the circumstances, on the first issue we disagree with the learned Judicial Commissioner that all the respondents were entitled to increases in pay under scale 76 of the 1957 Circular. For the reasons already given we hold that execpt for respondent No. 10 (PW7 - Razali bin Mohd. Sidek) the rest of the respondents were never entitled to scale 76.

On the second issue the learned Judicial Commissioner held that the respondents' claim was not time-barred under s. 25(a) of the Public Authorities Protection Act 1948. The relevant part of s. 2 provides:

> ... any suit ... commenced ... against any person for any act done in pursuance or execution ... of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect -
>
> (a) the suit, ... shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within twelve months next after the ceasing thereof;

The twelve-month period has been extended to thirty-six months by Act No. 252 of 1974, but for the purpose of this appeal, the twelve-month period applies.

It is the contention of Counsel for the appellants that even if scale 76 was held to be applicable, the respondents', claim is statute-barred under s. 2 (a) of the Act. Now that we have decided only respondent No. 10 is entitled to scale 76, we need only deal with his case as regards the plea of limitation. It is not denied that till to-date his pay has not been adjusted. We therefore agree with the learned Judicial Commissioner that there is a continuing injury. We also agree that the word "injury" in s. 2 (a) is not confined to injury in tort but it includes any legal wrong which is a violation of a contractual right. In the Oxford Companion to Law, the word "injury" is defined to mean:

> an infringement of a legal right vested in the complainer, done deliberately or by taking care inadequate to prevent it, though unintentional. It is distinct from damage, and there may be injury in this sense without damage or harm.

In the present dispute respondent No. 10 entered the State Medical Service of Pahang as an Office Boy on 1 March 1952 on a basic salary of RM25 per month. On 8 January 1957 he ceased work as an Office Boy and was appointed as a Larvae Collector with a basic monthly salary of RM70 with effect from 10 January 1957. His pay was revised under the 1957 Circular to RM85 per month which was the starting pay of scale 37. This new pay was below the salary scale 76 which startd at RM94. On 1 February 1969, he was drawing RM160 per month which was the maximum under scale 37, and it took him 12 years from 10 January

1957 to reach that maximum pay. On 1 May 1969 - the date on which the Suffian clean wage salary scale was implemented, his salary was raised from RM160 to RM230 per month, and he reached the maximum of RM245 the following year. Whereas, if he had been placed under scale 76 instead of scale 37 when the 1957 Circular was applied to him he would have started with a pay of RM94 and after 12 years his salary would have been RM197.50 as on 1 February 1969 instead of RM160 under scale 37. If his pay had been RM197.50 before option under Suffian his salary would have been more than RM230 per month on coversion. Thus on the facts, respondent No. 10 has suffered and is continuing to suffer injury by the appellants' refusal to put him on scale 76 to which he is lawfully entitled. The learned Judicial Commissioner had adopted 1 January 1970 - the date of the Suffian report as the date of cessation of the continuing injury instead of 1 May 1969 - the date on which the Suffian salary was retrospectively implemented. In so doing the learned Judicial Commissioner came to the conclusion that since the respondents' writ was filed on 27 October 1970, his claim was instituted within time. For reasons already stated, it is our view that the continuing injury has never in fact ceased, and as such as, far as respondent No. 10 is concerned, his claim is not statute-barred under s. 2 of the Public Authorities Protection Act. Further, although it was common ground that Suffian salary scales offered more attractive salaries to officers in the Public Service, we note that no specific provision was made under Suffian to cover scale 76. It is, therefore, a matter of conjecture to conclude that the continuing injury suffered by respondent No. 10 had ceased either on the date of Suffian report or on the date of its implementation. The Suffian salary scale were never pleaded by the parties nor brought into serious argument at the trial as a corner-stone of the respondents', claim. In any event we consider it unwise to determine the actual arrears of pay respondent No. 10 should be receiving. We would leave this matter to the appropriate authority. Although he had opted to come under Suffian, it would be for the Public Service Department to determine under which scale of the Suffian Report his pay should be converted if the had been on scale 76 on 10 January 1957.

In the circumstances, we would allow this appeal and set aside the order of the High Court. However, in respect of respondent No. 10 we would dismiss the appeal, although we would vary the order granted in his favour. We would grant him a declaration that he is entitled to have implemented in his favour salary scale 76 of the Federation Establishment Office Circular No. 5 of 1957 with effect from 10 January 1957. Since the appeal has succeeded only in part we order that each party should bear their own costs both here and the Court below.

Also found at [1983] 2 CLJ 63